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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

AURIO A. MATOS)

LLOYD SANTIAGO-SANTOS and)
LOURDES RODRIGUEZ BONET)

For Construction Permit for a)
New Station on Channel 293A)
in Culebra, Puerto Rico)

MM Docket No. 93-89

File No. BPH-911114MS

File No. BPH-911115MP

To: The Honorable Joseph P. Gonzalez
Administrative Law Judge

PROPOSED FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

OF

LLOYD SANTIAGO-SANTOS AND LOURDES RODRIGUEZ BONET

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	i
INTRODUCTION.....	1
PROPOSED FINDINGS.....	3
AURIO MATOS.....	3
SANTOS AND BONET.....	4
CONCLUSIONS OF LAW.....	9
ULTIMATE CONCLUSION.....	12

SUMMARY

This comparative proceeding requires analysis under the standard broadcast comparative criteria of two competing applicants for a new FM station for Culebra, Puerto Rico. On the record developed, it is very difficult, if not impossible, to find distinguishing characteristics between the two that would serve to predict which would provide the better service to the public. Each proposes 100% quantitative integration among their respective principals. Neither applicant is entitled to any credit for past residence in the area to be served by the proposed facilities, although each proposes to relocate should their respective application be granted. All of the principals in each of the applications are Hispanic. Each proposes utilization of auxiliary power. Thus, we are required to look at the experience and education of the principals of the two applicants. Conceding that this is an inexact science, it is submitted that the proposal by Lloyd Santiago-Santos and Lourdes Rodriguez Bonet with their formal education and specific broadcast experience offers the greater prospect of realizing the Commission's laudable goal of "best practicable service to the public."

However, as indicated by Santos and Bonet, this may well be a situation which requires a "tie-breaker" lottery to pick the winner.

I.

INTRODUCTION

1. This proceeding relates to mutually exclusive applications for a new FM station for Channel 293A in Culebra, Puerto Rico. The matter was designated for hearing by Order released April 8, 1993, DA 93-331 (HDO). The HDO as a preliminary matter recognized that the Channel 293A allotment for Culebra is short-spaced. Accordingly, the Commission in a further notice of proposed rulemaking in MM Docket No. 91-259, 7 FCC Rcd 3324, 3328 (Mass Media Bur. 1992), proposes to change the Culebra allotment from 293A to Channel 254A. While the parties in this proceeding were permitted to proceed, any construction permit awarded is contingent on the outcome of MM Docket No. 91-259.

2. The HDO specified the following issues:

a. To determine which of the proposals would, on a comparative basis, best serve the public interest.

b. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

Recognizing a difference in the size of the areas and populations that would receive service from the proposals, the HDO specified that "the areas and populations which would receive FM service of 1 mVm or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the

standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants." HDO ¶5.

3. Procedural dates were specified by the Presiding Judge in his order prior to prehearing conference released April 15, 1993. Discovery in the form of document production and depositions was completed as specified in the order prior to prehearing conference. Matos, by petitions to enlarge, attempted to have real party in interest and financial issues added against Santos and Bonet. These petitions were denied by orders released June 14, 1993 and August 20, 1993 respectively. Santos and Bonet, by petition to enlarge, sought the addition of site availability and financial issues against Matos. The petition was denied by Order released August 6, 1993. As of the date of this submission, a Petition to Enlarge seeking a misrepresentation issue against Santos and Bonet remains pending.

4. Written Direct Cases were exchanged and Matos sought opportunity to cross-examine principals of Santos and Bonet. Cross-examination was denied and the matter was submitted on the written testimony. A joint engineering exhibit was subsequently exchanged in which the parties stipulated that there were no areas within the proposed contours of the respective stations not served by five or more aural services.

5. Exhibits were identified by the parties and objections ruled upon by the Presiding Judge in an Admission Session on August 18, 1993. Proposed Findings were directed to be filed by October 4, with Reply Findings due on or before October 18, 1993.

II.

PROPOSED FINDINGS

AURIO A. MATOS

Applicant

6. Aurio A. Matos ("Matos") is a individual applicant. Matos Ex. 1, p. 1.

Integration

7. Matos is the proposed general manager of the Culebra FM facility. He proposes to work a minimum of 40 hours per week in that capacity. As general manager, Mr. Matos will direct the overall operation of the station, establishing and implementing the station's policies and practices. He will be responsible for hiring and firing of station personnel. Matos Ex. 1, p. 1.

8. Mr. Matos will terminate any then employment should his application be granted to devote full-time to the Culebra FM facility. Mr. Matos is a Hispanic male. Mr.

Matos has committed to relocate to Culebra, Puerto Rico should his application be granted. Matos Ex. 1, p. 1.

Past Broadcast Experience

9. From 1980 to 1989, Mr. Matos was general manager of FM station WRFE, Mayaguez, Puerto Rico. From 1989 until July 31, 1992, Mr. Matos was General Manager of non-commercial FM station WJDZ (now WKVN), Levittown, Puerto Rico. Matos Ex. 1, p. 2.

Diversification

10. Mr. Matos claims that he has no other media interests. Matos Ex. 1, p. 2.

Auxiliary Power

11. Matos proposes to install auxiliary power at both the studio and transmitter locations to ensure continued operations during commercial power failures. Matos Ex. 2, p. 1.

SANTOS AND BONET

Applicant

12. Lloyd Santiago-Santos and Lourdes Rodriguez Bonet ("Santos and Bonet") are husband and wife and filed their application for Culebra as a general partnership with each having a 50% interest in the venture, and each sharing

equally the overall responsibility for the venture. Santos and Bonet, Ex.1, p. 1. Lourdes Rodriguez Bonet ("Bonet") was born April 22, 1958 in San Juan, Puerto Rico and has resided in Puerto Rico since birth. She received a degree in 1980 from the University of Puerto Rico in Business Administration. Santos and Bonet Ex. 1, p. 1. Lloyd Santiago-Santos ("Santos") was born in Puerto Rico on September 25, 1957 and has resided there since birth. He graduated from the University of Puerto Rico in 1980 with a B.B.A. (commerce) degree. He received a juris doctorate degree in 1986 from InterAmerican University. Santos and Bonet Ex. 2, p. 1.

Integration

13. Bonet is to serve as the general manager of the proposed station should the Santos and Bonet application be granted. As the general manager, she will have the overall responsibility for the day-to-day operations of the station. She will supervise overall performance of all station employees in their assigned duties. She will also serve as the principal liaison between the station and the community and as such will oversee the continuing ascertainment of community needs and the formulation of programming to meet those needs. Santos and Bonet Ex. 1, p. 2.

14. Bonet will devote at least 40 hours per week to her duties as general manager, and will terminate any then employment should their application be granted. She will relocate to Culebra should the application be granted. Santos and Bonet Ex. 1, p. 2.

15. Based on his experience in sales and marketing, Santos will be the sales manager of the proposed Culebra facilities. In addition to his overall responsibility as a partner in the application, as sales manager, his responsibilities will include the development of advertising policies, advertising rates and the supervision of sales personnel. Should the Santos and Bonet application be granted, Lloyd Santiago-Santos will terminate all then employment to devote full-time to the Culebra, FM project. He will also relocate along with his wife to Culebra should their application be granted. Santos and Bonet Ex. 2, pp. 2-3.

Diversification

16. Other than a 33 1/3% ownership interest in Santiago Communications, Inc., a publisher of a monthly medical newspaper in the northern part of Puerto Rico from Vega Alta to Isabela, Bonet has no other interests in any AM, FM or TV broadcast station, daily newspaper, cable television system, advertising agency or other media of mass communication. In the event that Santos and Bonet application is granted,

Lourdes Rodriguez Bonet has committed to divest her 1/3 interest in Santiago Communications, Inc. Santos and Bonet Ex. 1, pp. 2-3.

17. Lloyd Santiago-Santos holds no interest in any AM, FM or TV broadcast station, daily newspaper, cable television system or advertising agency. Santos and Bonet Ex. 2, p. 1. However, Santos presently holds a 50% interest in the corporation that publishes El Periodico del Norte, a weekly newspaper published in Arecibo, Puerto Rico and distributed free to communities on the northern part of the island. Exhibit 2, page 2. He also holds a 33 1/3% interest in Santiago Communications, Inc., publisher of a monthly medical newspaper distributed free in the northern part of Puerto Rico. Mr. Lloyd Santiago-Santos has committed to divest his interest in these weekly and monthly publications. Santos and Bonet Ex. 2, pp. 2-3.

Past Broadcast Experience

18. Lourdes Rodriguez Bonet worked at Radio Station WQBS, San Juan, Puerto Rico from 1980 to late 1981. She worked as an accountant in the accounting/business office. Her duties involved her in all aspects of station financial operations. She prepared invoices which involved examination of station logs for spot runs and coordinated the calculation of sales commissions with the sales department. Santos and Bonet Ex. 1, p. 3.

19. From 1981 to 1982, Lloyd Santiago-Santos worked as a sales person for Radio Station WQIL, San Juan, Puerto Rico. From 1982 to 1991, Santos worked as general manager for Station WMSW-AM, (Hatillo, Puerto Rico). As general manager, his duties included day-to-day responsibility for all facets of the radio station operations. Santos and Bonet Ex. 2, p. 3.

Auxiliary Power

20. Santos and Bonet propose to establish an auxiliary generator at the transmitter site to ensure continued operations in the event of power failure. The radio facility will be designed so that broadcasts can be accomplished from the transmitter site in the event of power failure so that there will be no requirement for an auxiliary power source at the studio location if it is different from the transmitter site. Santos and Bonet Ex. 1, p. 4.

Areas and Populations

21. The parties have stipulated "that the proposed service area of each of the two applicants is already served by five or more aural services". Jt. Ex. 1, p. 2.

III.

CONCLUSIONS OF LAW

Diversification

22. Neither applicant is subject to a diversification demerit. Neither has any broadcast interest other than the instant applications. Santos and Bonet have pledged to divest their interests in certain monthly and weekly newspapers. In any event, the monthly and weekly newspaper interests should not cause Santos and Bonet to suffer any diversification demerit. The Commission has traditionally given little or no weight to non-daily circulation newspapers or magazines as a diversification factor since there is no meaningful adverse impact on the Commission's diversification policies. See Barton Broadcasting Company, 104 FCC 2d 785, 787-788 (Rev. Bd. 1986).

Auxiliary Power

23. Both Applicants propose auxiliary power to ensure continued operations in the event of commercial power failures. Thus, neither is entitled to a preference under this category.

Integration Of Ownership Into Management

24. Matos as an individual applicant is proposed as the general manager should his application be granted. He has promised to devote at least 40 hours per week to his role as

general manager and he has promised to terminate any then employment and to relocate to Culebra.

25. Likewise, both Santos and Bonet propose to devote full-time to the Culebra radio station. Bonet will serve as the general manager with Santos as the sales manager. Each promises to give up any then employment to devote full-time to the Culebra operation and each promises to relocate to Culebra in the event that there application is granted.

26. Thus, both Matos and Santos and Bonet are entitled to 100% quantitative integration credit. The principals of both proposals will be fully integrated into the station management. Each is entitled to slight qualitative enhancement for their promises to relocate to the city of license. All of the principals in each of the respective proposals are Hispanic.

Past Broadcast Experience

27. Each applicant claims past broadcast experience. Matos was general manager of an FM station in Mayaguez, Puerto Rico from 1980 to 1989. However, Mr. Matos was only 17 years old, having just graduated from high school at best, when he became general manager of the Mayaguez, Puerto Rico radio station. ^{1/}

^{1/} It is asked that official notice be taken of the fact that Aurio A. Matos was born on September 13, 1963. Counsel for Matos was supposed to provide this information pursuant to a request made at the admissions session.

28. In contrast, Bonet, after graduation from college, worked as an accountant in the accounting and business office of radio station WQBS, San Juan, Puerto Rico, from 1980 to 1981. Santos has 10 years of solid broadcast experience serving as general manager of a radio station from 1982 to 1991. This was after Mr. Santos graduated from the University of Puerto Rico in 1980. Thus, while it is recognized that past broadcast experience is relatively minor in the comparative criteria, it is submitted that the Santos and Bonet experience should be given slightly more quantitative enhancement credit than that of Matos who obviously is stretching it when he claims to have been a general manager at the age of 17.

Areas and Population

29. The HDO ¶5 specified that areas and populations together with the availability of other primary aural services in such areas would be considered under the standard comparative issue in this proceeding. Since, the parties having stipulated that there are no areas which do not receive five or more services, we submit there is no basis for a comparative preference under this sub-issue.

IV.

ULTIMATE CONCLUSION

30. We are faced here with applicants with little or no discernible differences under the Commission's comparative criteria, Policy Statement On Comparative Broadcast Hearings, 1 FCC 2d 393 (1965), to lead one to conclude that one is more likely than the other to provide the better service to the public in Culebra. ^{2/} Matos and Santos and Bonet were all born in Puerto Rico. But none have lived in Culebra. Santos and Bonet have more formal education in business and commerce than does Mr. Matos. Santos and Bonet have tried to utilize their respective talents in developing the management team with Bonet with her general administrative background serving as the general manager and Santos with his sales and marketing experience serving as the sales manager of the proposed Culebra facilities. While it is difficult to predict future performance, this is precisely what is called for in this comparative process. At times this process calls for an educated guess as to what will happen in the future. Thus, when everything is taken into consideration, it is submitted that the background of Santos and Bonet with their formal education as well as specialized broadcast past experience dictates that they are

^{2/} This may be a case where a "tie breaker" lottery should be used. See Order, General Docket No. 81-768, 57 RR 2d 427 (1984).


the ones more likely to provide the best practicable service to the public in Culebra.

31. There being no other basis for distinguishing between the applicants pursuant to the standard comparative criteria, we submit that the Santos and Bonet application should be granted and the Matos application denied.

Respectfully submitted,

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AND
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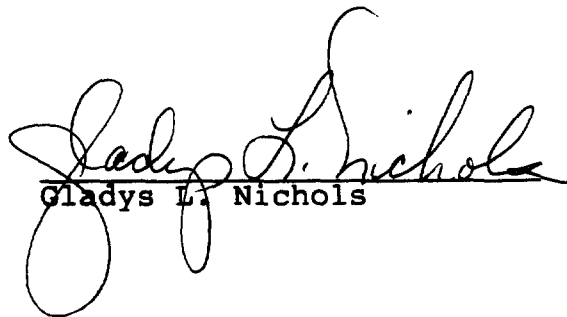
CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 4th day of October, 1993, the foregoing **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served to the following persons by First Class Mail:

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